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10 Northern California River Watch

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 NORTHERN CALIFORNIA RIVER
14 WATCH, a non-profit Corporation

15 Plaintiff,

16 v.

17 SONOMA COUNTY WATER AGENCY,
18 SONOMA COUNTY BOARD OF
19 SUPERVISORS, RUSSIAN RIVER COUNTY
20 SANITATION DISTRICT, and DOES 1-10,
21 Inclusive,

22 Defendants.

CASE NO. **06 4182**

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES,
RESTITUTION AND REMEDIATION
AND DECLARATORY RELIEF**
(Environmental - Clean Water Act
33 U.S.C. §1251 et seq.; 28 U.S.C. §2201)

23 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter,
24 "PLAINTIFF") by and through its attorneys, and for its Complaint against defendants SONOMA
25 COUNTY WATER AGENCY, SONOMA COUNTY BOARD OF SUPERVISORS, RUSSIAN
26 RIVER COUNTY SANITATION DISTRICT and DOES 1-1, Inclusive, (hereafter, referred to
27 collectively as "DEFENDANTS"), states as follows:

28 **I. NATURE OF THE CASE**

1. This is a citizens' suit for relief brought by PLAINTIFF under the Federal Water Pollution
Control Act, also known as the Clean Water Act (hereafter, "CWA"), 33 U.S.C. § 1251 et seq.,

90-1-24-177-02178/SMITH

1 specifically CWA § 505, 33 U.S.C. § 1365, 33 U.S.C. § 1311, and 33 U.S.C. § 1342, to stop
2 DEFENDANTS from repeated and ongoing violations of the CWA. These violations are detailed in
3 the Notice of Violations and Intent to File Suit made part of the pleadings of this case and attached
4 hereto as EXHIBIT A (hereafter, "NOTICE").

5 2. DEFENDANTS are routinely violating the CWA by failing to meet the terms of the Russian
6 River County Sanitation District's National Pollution Discharge Elimination System ("NPDES")
7 Permits (hereafter, "PERMITS"), adopted by the Regional Water Quality Control Board, North Coast
8 Bay Region (hereafter, "RWQCB"), regulating the Russian River Wastewater Collection and
9 Treatment Facility (hereafter, "THE FACILITY"). DEFENDANTS are also routinely violating the
10 Water Quality Control Plan for the North Coast Region (hereafter, "Basin Plan"), toxics standards
11 promulgated by the State Water Resources Control Board (hereafter, "SWRCB"), and
12 Environmental Protection Agency's (hereafter, "EPA") regulations codified in the Code of Federal
13 Regulations in the course of DEFENDANTS' operation of THE FACILITY.

14 3. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future violations, the
15 imposition of civil penalties, and other relief for DEFENDANTS' violations of the terms of their
16 PERMITS.

17 4. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies with regard to public
18 participation in the enforcement of the CWA. 33 U.S.C. § 1251(e) provides, in pertinent part

19 *Public participation in the development, revision, and enforcement of any regulation,*
20 *standard, effluent limitation, plan or program established by the Administrator or any*
21 *State under this chapter shall be provided for, encouraged, and assisted by the*
Administrator and the States.

22 5. DEFENDANTS illegally discharge to waters which are habitat for threatened or endangered
23 species as that term is defined by the California EPA and the United States EPA.

24 **II. PARTIES**

25 6. PLAINTIFF, NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit public
26 benefit corporation duly organized under the laws of the State of California, with headquarters and
27 main office located at 6741 Sebastopol Avenue, Suite 140, Sebastopol, California. PLAINTIFF is
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1 dedicated to protect, enhance and help restore the surface and subsurface waters of Northern
2 California. PLAINTIFF's members live in Northern California including Sonoma County where
3 THE FACILITY under DEFENDANTS' operation and/or control is located.

4 7. PLAINTIFF's members live nearby to waters affected by DEFENDANTS' illegal discharges.
5 PLAINTIFF's members have interests which are or may be adversely affected by DEFENDANTS'
6 violations as alleged in this Complaint. Said members use the effected waters and effected watershed
7 areas for domestic water, recreation, sports, fishing, swimming, hiking, photography, nature walks,
8 religious, spiritual and shamanic practices, and the like. Furthermore, the relief sought will redress
9 the injury in fact, likelihood of future injury and interference with the interests of said members.

10 8. Defendant SONOMA COUNTY WATER AGENCY is a governmental entity with
11 administrative offices located at 404 Aviation Boulevard, Santa Rosa, California.

12 9. Defendant SONOMA COUNTY BOARD OF SUPERVISORS is a governmental entity with
13 administrative offices located at 575 Administration Drive, Room 100A, Santa Rosa, California. It
14 sits as the Board of Directors of defendant SONOMA COUNTY WATER AGENCY and has final
15 responsibility for the policies of defendant SONOMA COUNTY WATER AGENCY.

16 10. Defendant RUSSIAN RIVER COUNTY SANITATION DISTRICT is a governmental entity
17 with administrative offices located at 404 Aviation Boulevard, Santa Rosa, California.

18 11. Defendants DOES 1 - 10, Inclusive, respectively, are persons, partnerships, corporations and
19 entities, who are, or were, responsible for, or in some way contributed to, the violations which are the
20 subject of this Complaint or are, or were, responsible for the maintenance, supervision, management,
21 operations, or insurance coverage of THE FACILITY and DEFENDANTS' operations at THE
22 FACILITY. The names, identities, capacities, and functions of Defendants DOES 1 - 10, Inclusive
23 are presently unknown to PLAINTIFF. PLAINTIFF shall seek leave of court to amend this
24 Complaint to insert the true names of said DOES Defendants when the same have been ascertained.

25 **III. JURISDICTIONAL ALLEGATIONS**

26 12. Subject matter jurisdiction is conferred upon this Court by CWA § 505(a)(1), 33 U.S.C. §
27 1365(a)(1), which states in part that, "any citizen may commence a civil action on his own behalf
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1 against any person . . . who is alleged to be in violation of (A) an effluent standard or limitation
2 or (B) an order issued by the Administrator or a State with respect to such a standard or limitation.”
3 For purposes of CWA § 505, “the term ‘citizen’ means a person or persons having an interest which
4 is or may be adversely affected.”

5 13. Subject matter jurisdiction is also conferred upon this Court by 28 U.S.C. § 2201(a) (see also
6 Fed. Rules Civ. Proc. 57), to rule on the validity of the contract between defendant SONOMA
7 COUNTY WATER AGENCY and defendant RUSSIAN RIVER COUNTY SANITATION
8 DISTRICT, which contract is attached hereto and made part of these pleadings as EXHIBIT B.

9 14. PLAINTIFF’s members and supporters reside in the vicinity of, derive livelihoods from, own
10 property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit from the
11 waterways and associated natural resources into which DEFENDANTS discharge wastewater, or by
12 which DEFENDANTS’ operations in violation of DEFENDANTS’ PERMITS and CWA § 301(a),
13 33 U.S.C. § 1311(a) adversely affect members’ interests. The health, economic, recreational,
14 aesthetic and environmental interests of PLAINTIFF and its members may be, have been, are being,
15 and will continue to be adversely affected by DEFENDANTS’ unlawful violations. PLAINTIFF
16 contends there exists an injury in fact to its members, causation of that injury by the DEFENDANTS’
17 conduct complained of herein, and a likelihood that the requested relief will redress that injury.

18 15. Pursuant to CWA § 505(b)(1)(a), 33 U.S.C. § 1365(b)(1)(a), PLAINTIFF gave notice of the
19 violations alleged in this Complaint more than sixty (60) days prior to commencement of this lawsuit,
20 to: (a) DEFENDANTS, (b) the United States Environmental Protection Agency, federal and regional,
21 and (c) the State of California Water Resources Control Board.

22 16. Pursuant to CWA § 505(c)(3), 33 USC § 1365(c)(3), a copy of this Complaint has been
23 provided to the United States Attorney General and the Administrator of the Federal EPA.

24 17. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this District as THE
25 FACILITY which is under DEFENDANTS’ ownership, operation and/or control, and the sites which
26 are the source of the violations complained of in this action where illegal discharges occurred, are
27 located within this District.
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1 FACILITY as a point source, the discharges from which contribute to violations of applicable water
2 quality standards.

3 **V. STATUTORY AND REGULATORY BACKGROUND**

4 25. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a "point
5 source" into the navigable waters of the United States, unless such discharge is in compliance with
6 applicable effluent limitations as set by the EPA and the applicable State agency. These limits are to
7 be incorporated into an NPDES permit for that point source specifically. Additional sets of
8 regulations are set forth in the Basin Plan, California Toxics Plan, the Code of Federal Regulation and
9 other regulations promulgated by the EPA and the SWRCB. CWA § 301(a) prohibits discharges of
10 pollutants or activities not authorized by, or in violation of an effluent standard or limitation or an
11 order issued by the EPA or a State with respect to such a standard or limitation including an NPDES
12 permit issued pursuant to CWA § 402, 33 U.S.C. § 1342. THE FACILITY is a point source under the
13 CWA.

14 26. The Administrator of the EPA has authorized the RWQCB to issue NPDES permits, subject to
15 specified conditions and requirements, pursuant to CWA § 402, 33 U.S.C. § 1342.

16 27. The RWQCB adopted NPDES PERMITS prescribing effluent limitations and other conditions
17 of compliance for THE FACILITY. The PERMITS are identified in the NOTICE. These PERMITS
18 authorize DEFENDANTS to discharge limited quantities of wastewater and pollutants into
19 the aforementioned waterways and require DEFENDANTS to comply with various reporting and
20 monitoring requirements.

21 28. The PERMITS also prescribe conditions to ensure compliance with the CWA. They require
22 DEFENDANTS to establish and maintain records, to install, use and maintain monitoring equipment,
23 to regularly monitor and sample pollutants in their discharges, and to report to the RWQCB in
24 specified ways on a regular basis regarding discharge of pollutants from THE FACILITY. The reports
25 include mandatory monthly Self Monitoring Reports (hereafter, "SMRs"). All conditions of the
26 PERMITS are enforceable in a citizens' suit.

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VI. DEFENDANTS' VIOLATIONS

29. DEFENDANTS' discharges from THE FACILITY violated the PERMITS on numerous occasions. Those violations are continuing. They are established in DEFENDANTS' monitoring data or lack of monitoring and reporting which are necessary for DEFENDANTS to prove compliance with the PERMITS, and are established in SMRs as well as data sent to the RWQCB by DEFENDANTS and documents in DEFENDANTS' possession or otherwise available to DEFENDANTS.

30. The enumerated violations are detailed below and in the NOTICE.

31. The types of violations are described with particularity by using the designations as set forth in the PERMITS and detailed in the NOTICE using the same designations as in the PERMITS.

32. The location of the discharges are the discharges points as described in the NOTICE and incorporated herein by reference.

VII. CLAIM FOR RELIEF

**A. First Claim For Relief
(Violation of CWA 33 U.S.C. § 1251 et seq., 33 U.S.C. § 1342, 33 U.S.C. § 1311)**

33. PLAINTIFF realleges and incorporates by reference the allegations of Paragraphs 1 through 32 as though fully set forth herein including all allegations in EXHIBIT A and EXHIBIT B incorporated herein by reference.

34. DEFENDANTS have violated and continue to violate the CWA as evidenced by the violations of the terms of the PERMITS as well as applicable State and Federal standards. By law and by the terms of the PERMITS to which DEFENDANTS have not objected, violations of the NPDES PERMITS are violations of the CWA. (See 40 C.F.R. § 122.41(a)).

35. PLAINTIFF is informed and believes and on such information and belief alleges DEFENDANTS' violations are ongoing, and will continue after the filing of this Complaint. PLAINTIFF alleges all violations which may have occurred or will occur prior to trial, but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by DEFENDANTS to the RWQCB or to PLAINTIFF prior to the filing of this Complaint.

VIII. RELIEF REQUESTED

WHEREFORE, PLAINTIFF prays that the Court grant the following relief:

39. Declare defendant SONOMA COUNTY WATER AGENCY to have violated and to be in violation of the CWA;
40. Declare the rights and liabilities of DEFENDANTS;
41. Issue an injunction ordering DEFENDANTS to operate THE FACILITY in compliance with the CWA and applicable effluent and receiving water limitations in the PERMITS, as well as State and Federal standards;
42. Order defendant SONOMA COUNTY WATER AGENCY to pay civil penalties per violation per day for its violations of the CWA;
43. Order defendant SONOMA COUNTY WATER AGENCY to pay PLAINTIFF's reasonable attorneys' fees and costs (including expert witness fees), as provided by 33 U.S.C. § 1365(d); and,
44. Grant such other and further relief as may be just and proper.

DATED: JULY 5, 2006



JERRY BERNHAUT
Attorney for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH

EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469
Phone 707-528-8175
warrioreco@yahoo.com

Santa Rosa, California 95402
Fax 707-528-8675



March 10, 2006

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

Randy D. Poole, General Manager
Sonoma County Water Agency
404 Aviation Boulevard
Santa Rosa, CA 95403

Operator
Russian River County Sanitation District
404 Aviation Boulevard
Santa Rosa, CA 95403

Steven A. Woodside, County Counsel
County of Sonoma
575 Administration Dr. Room 105-A
Santa Rosa, CA 95403

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Mr. Poole, Mr. Woodside and Operator:

Clean Water Act § 505(b) requires that sixty (60) days prior to the initiation of a civil action under 33 U.S.C. § 1365(a), Clean Water Act § 505(a), a citizen must give notice of his/her intent to sue to the alleged violator, the United States Environmental Protection Agency, the State in which the violations occur and the registered agent for the alleged violator.

Northern California River Watch ("River Watch") hereby places the Sonoma County Water Agency ("SCWA"), the County of Sonoma and the Russian River County Sanitation District ("RRCSD") on notice that following the expiration of sixty (60) days from the date of this NOTICE, River Watch intends to bring

2. *The activity alleged to constitute a violation.*

River Watch has set forth narratives below, describing with particularity the activities leading to violations.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations are the RRCSD, the SCWA and those of its officers, board members and employees responsible for compliance with the NPDES permit regulating the Russian River Facility.

4. *The location of the alleged violation.*

The locations of the various violations are identified in the Russian River Facility's NPDES permits, Reports of Waste Discharge, Annual Reports, other records and this NOTICE. Otherwise, the location of the violations are within the Russian River watershed or any place where the Russian River Facility discharges either directly or indirectly including from its collection system

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined both RWQCB and SCWA records for the period from March 1, 2001 to March 1, 2006. Therefore, the range of dates covered by this NOTICE is from March 1, 2001 to March 1, 2006. River Watch will from time to time update this NOTICE to include all violations which occur after the range of dates currently covered by this NOTICE. Some of the violations are continuous and therefore each day is a violation.

II. BACKGROUND

The Russian River Facility serves the communities of Armstrong Park, Drakes Road Area, Guerneville, Guerneville Park, Rio Nido and Vacation Beach. Treated effluent is disposed of by irrigation and discharge to the Russian River during the discharge season (October 1 through May 14). Waste Discharge Requirements Order No. 92-51, which also served as the Russian River Facility's NPDES Permit No. CA0024058, was adopted on May 28, 1992. The Russian River Facility's current Permit, Waste Discharge Requirements Order No. R1-2003-0026, which also serves as the Russian River Facility's NPDES Permit No. CA0024058, was adopted on November 5, 2003. The Order allows the RRCSD to discharge up to one percent of the flow of the receiving water from October 1 through May 14 each year.

The Russian River Facility has a history of serious collection system problems including inflow and infiltration causing unauthorized bypasses and releases of untreated and partially treated wastewater into the Russian River. The collection system has a history of flooding during large storm events, in part because approximately 50 percent of the collection system is located within the 100 year flood plain of the Russian River. This results in high flows to the treatment plant which creates hydraulic overload of the plant's treatment capacity, leading to effluent limit violations. Inadequate wastewater storage capacity has resulted in storage pond overflows to the Russian River. The collection system has cracks, misalignments and

blockages which cause sewage system overflows and discharges. Much of the illegal discharges from the collection system occur subsurface. These subsurface discharges contaminate ground waters and migrate to surface waters. These types of subsurface discharges are continuous. The SCWA and RRCSD utilize irrigation as part of their disposal options. Unfortunately, both entities over irrigate by applying waste water in amounts beyond the absorbent capacity of the land.

Pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), the State of California has formally concluded that violations by the RRCSD and the SCWA of the Russian River Facility's NPDES Permit are prohibited by law. Beneficial uses of the Russian River and its tributaries in the vicinity of the Russian River Facility are being effected in a prohibited manner by these violations. Pursuant to CWA § 304, 33 U.S.C. § 1311, the EPA and the State of California have identified the Russian River Facility including its collection system and disposal points and areas as point sources, the discharges from which contribute to violations of applicable water quality standards.

River Watch believes the following remedial measures are necessary to bring the SCWA and RRCSD into compliance with the Russian River Facility's NPDES permit:

1. A reduction of collection system inflow and infiltration through an aggressive collection system management, operation and maintenance ("CMOM") program, with a clear time line for prioritized repairs based on human marker receiving water study information;
2. Compliance with monitoring requirements, especially regarding receiving water impacts;
3. Increased storage capacity and additional storage ponds;
4. Testing up and down stream from irrigated areas to determine the impacts of irrigation runoff; and,
5. A public safety program with posted warnings at contaminated waterways.

III. VIOLATIONS

From March 1, 2001 to March 1, 2006, the RRCSD and the SCWA have violated the requirements of the Russian River Facility's NPDES Permits, the Basin Plan and the Code of Federal regulations as those requirements are referenced in its Permits for discharge limitations, effluent limitations, and receiving water limitations. Said violations are evidenced and reported by the RRCSD in its monthly self monitoring reports ("SMRs") or daily monitoring reports ("DMRs"), its own testing data compiled in compliance with its Permit or other orders of the RWQCB, other documentation filed with the RWQCB or in its possession, and, as evidenced by unpermitted discharges due to failures in the collection system. Furthermore these violations are continuing. The violations, established in SMRs, raw data and records of the RWQCB, include the following categories in the Permit:

Discharge Prohibitions

Violations Description

- 1825** Collection system overflows caused by underground exfiltration. This is a case in which untreated sewage is discharged from the collection system prior to reaching the treatment facility. Underground discharges are alleged to have been continuous throughout the 5 year period from March 1, 2001 to March 1, 2006. Evidence to support the allegation of underground discharge of raw sewage exists in the SCWA's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the treatment plant reported in SMRs, video inspection of the collection system, and testing of waterways adjacent to sewer lines for nutrients, pathogens and other constituents indicating sewage contamination, such as caffeine.
- 150** Discharges caused by surface overflows directly from overflowing manholes. Surface overflows are evidenced in the SCWA's West County Sewage Stoppage reports, such as those submitted for February 8, 2003, November 22, 2001, and June 16, 2002. (Order No. 92-51 A.1, A.5, Order No. R1-2003-0026, A.1, A.4, A.5)
- 18** Leaks from broken irrigation lines. (Order No. 92-51 A.1, A.3, Order No. R1-2003-0026 A.1, A.5)
- 15** Irrigation excessive of vegetative capacity. (Order No. 92-51 A.1, A.3, Order No. R1-2003-0026 A.1, A.5)
- 92-51 A.1: The discharge of waste to land that is not under the control of the permittee is prohibited, except as authorized under D. Solids Disposal.
- 92-51 A.3: Creation of a pollution, contamination or nuisance, as defined by Section 13050 of the California Water Code (CWC) is prohibited. [Health and Safety Code, Section 5411]
- 92-51 A.5: The discharge of untreated waste from anywhere within the collection, treatment or disposal facility is prohibited.
- R1-2003-0026 A.1: The discharge of any waste not disclosed by the Permittee and of any waste disclosed by the Permittee but not reasonably anticipated to occur is prohibited.
- R1-2003-0026 A.4: The discharge of untreated or partially treated waste from anywhere within the collection, treatment or disposal facility is prohibited.
- R1-2003-0026 A.5: The discharge of waste to land that is not owned by or under agreement to use by the Permittee is prohibited.

Effluent Limits

<u>Violations</u>	<u>Description</u>
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- | | |
|------------|---|
| 10 | Bypass of treatment process. (Order 92-51 B.1, Order No. R1-2003-0026 B.1) |
| 20 | Limit on turbidity. (Order No. 92-51 B.1, Order No. R1-2003-0026 B.6) |
| 10 | Limit on BOD. (Order No. 92-51 B.1, B.2, Order No. R1-2003-0026 B.1) |
| 10 | Limit on total suspended solids. (Order No. 92-51 B.1, B.2, Order No. R1-2003-0026 B.1) |
| 10 | Limit on total coliform. (Order No.92-51 B.1, B.2, Order No. R1-2003-0026 B.2) |
| 92-51 B.1: | Only advanced treated wastewater, as defined by the numerical limitations below, shall be discharged from the wastewater treatment plant to the Russian River (Discharge Serial No. 001). The advanced treated wastewater shall be adequately disinfected, oxidized, coagulated, clarified and filtered (or equivalent), as determined by the State Department of Health Services. Advanced treated wastewater shall not contain constituents in excess of the following limits: (See Order 92-51 p4 for numerical limits) |

R1-2003-0026 B.1:

Only advanced treated wastewater, as defined by the numerical limitations below, shall be discharged from the WWTF to the Russian River. The advanced treated wastewater shall be adequately disinfected, oxidized, coagulated, clarified, and filtered as required by Title 22, Division 4, Chapter 3, CCR. Advanced treated wastewater shall not contain constituents in excess of the following limitations: (See Order R1-2003-0026, p12 for numerical limits)

R1-2003-0026 B.2:

The disinfected effluent discharged from the WWTF to the Russian River shall not contain concentrations of total coliform bacteria exceeding the following limitations: (See Order R1-2003-0026, p13 for numerical limits)

Receiving Water Limitations

<u>Violations</u>	<u>Description</u>
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- | | |
|------------|--|
| 38 | Limit on pH. In addition to the violations listed by the SCWA, River Watch also alleges that 50% of all 6.5 pH are actually below 6.5 due to instrument reading in 3 significant numbers but rounding up. (Order No. 92-51 C.2, Order No. R1-2003-0026 D.2) |
| 20 | Limit on turbidity. (Order No. R1-2003-0026 D.3) |
| 92-51 C.2: | The discharge shall not cause the pH of the receiving waters to be depressed below 6.5 nor raised above 8.5. Within this range, the discharge shall not cause the pH of the receiving waters to be changed at any time more than 0.5 units from that which occurs naturally. |

R1-2003-0026 D.2 :

The discharge shall not cause the pH of the receiving waters to be depressed below 6.5 nor raised above 8.5. Within this range, the discharge shall not cause the pH of the receiving waters to be changed at any time more than 0.5 units from that which occurs naturally. If the pH of the receiving water is less than 6.5, the discharge shall not cause a further depression of the pH of the receiving water. If the pH of the receiving water is greater than 8.5, the discharge shall not cause a further increase in the pH of the receiving water.

R1-2003-0026 D.3:

The discharge shall not cause the turbidity of the receiving waters to be increased more than 20 percent above naturally occurring background levels.

Monitoring Requirements

110 Failure to report or adequately describe violations. (Order No. 92-51 E.10.a, Order No. R1-2003-0026 K.8, K.10.a)

92-51 E.10.a:

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

R1-2003-0026 K.8:

The Permittees shall furnish the Regional Water Board, State Water Board, or U.S. EPA, within a reasonable time, any information that the Regional Water Board, State Water Board, or U.S. EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order or to determine compliance with this Order. The Permittees shall also furnish to the Regional Water Board, upon request, copies of records required to be kept by this Order [40 CFR 122.4(h)].

R1-2003-0026 K.10.a:

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

IV. PENALTIES

Pursuant to CWA § 309(d), 33 U.S.C. § 1319(d), each of the above described violations of the CWA subjects the violator to a penalty of up to \$27,500.00 per day per violation for violations occurring within five (5) years prior to the initiation of a citizen enforcement action. In addition to civil penalties, River Watch will seek injunctive relief preventing further violations of the Act pursuant to CWA § 505(a) and CWA § 505(d), 33 U.S.C. § 1365(a) & (d), and such other relief as is permitted by law. Lastly, CWA § 505(d), 33 U.S.C. § 1365(d), permits prevailing parties to recover costs and fees.

cc:

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Walnut Creek, CA 94596-3728

EXHIBIT B

AGREEMENT BETWEEN THE OCCIDENTAL COUNTY SANITATION DISTRICT,
FORESTVILLE COUNTY SANITATION DISTRICT, RUSSIAN RIVER COUNTY
SANITATION DISTRICT, SOUTH PARK COUNTY SANITATION DISTRICT,
SONOMA VALLEY COUNTY SANITATION DISTRICT, AND THE SONOMA COUNTY
WATER AGENCY FOR WASTEWATER OPERATION AND MAINTENANCE SERVICES

This Agreement is made and entered into the 6th day of December, 1994, by and between the Occidental County Sanitation District, Forestville County Sanitation District, Russian River County Sanitation District, South Park County Sanitation District, Sonoma Valley County Sanitation District, hereinafter "Districts", and the Sonoma County Water Agency, hereinafter "Agency".

WHEREAS, the Sonoma County Board of Supervisors, during the reorganization hearings in May 1993, directed Agency to prepare a Reorganization Implementation Plan for transferring the County's wastewater responsibilities to Agency; and

WHEREAS, Agency's Board of Directors on December 14, 1993, approved the Reorganization Implementation Plan and directed Agency staff to seek legislative authority for Agency to perform sanitation services and implement recommendations of the Plan, including all acts necessary to transfer wastewater responsibilities of County to Agency by January 1, 1995; and

WHEREAS, the California State Legislature has enacted Chapter 1089, Statutes 1994, enabling Agency to perform sanitation responsibilities including but not limited to all acts necessary to own or contract to operate, maintain, repair, and improve wastewater collection, treatment, and disposal facilities; and

WHEREAS, Districts are authorized and empowered to own, operate and maintain wastewater collection, treatment, and disposal facilities and have undertaken such actions to construct these facilities; and

WHEREAS, in past years, Districts have contracted with the County of Sonoma, Department of Public Works, to perform sanitation services for Districts including the operation, maintenance, and capital improvements to Districts' systems, which contract will expire on January 1, 1995; and

WHEREAS, County has transferred to Agency all County sanitation personnel, files, equipment and other items of work in order for Agency to assume County responsibilities for the operation and maintenance of wastewater systems; and

WHEREAS, Agency has sanitation expertise, knowledge, and experience necessary to provide sanitation services to Districts; and

WHEREAS, Districts are relying upon the professional ability and training of Agency as a material inducement to enter into this Agreement;

NOW, THEREFORE, it is mutually agreed as follows:

1. This Agreement shall be effective on January 1, 1995.
2. Agency, beginning January 1, 1995, shall perform all necessary maintenance, operation, and administrative activities for Districts' wastewater facilities, including but not limited to engineering services, environmental services, administrative services, operation and maintenance services, laboratory services, and construction contract administration services to carry out the Districts' responsibilities in providing sanitation service to the general public within Districts' boundaries.
3. Agency shall perform such services pursuant to Agency's and Districts' enabling acts, powers, and procedures and pursuant to Agency's usual and customary operating and maintenance practices and standards; and Agency's general policies and procedures for carrying out Agency activities, including but not limited to personnel, budgeting and appropriation process, purchasing, acquisition and disposition of property, and administrative authority. Should conflicts or limitations exist between Agency's and Districts' enabling acts, powers, or procedures, Agency shall limit its activities and procedures on behalf of Districts to those authorized by Districts' enabling act, powers or procedures.
4. Districts and Agency shall use best efforts to adopt uniform cost accounting methods and procedures, engineering design criteria and standards, construction contract bidding procedures, and environmental procedures and mitigation criteria.
5. Districts shall pay all direct costs, as determined by Agency and approved by Districts' Board through appropriations in the budgeting process, for services, supplies, materials, capital projects, fixed assets, construction contracts, utilities, permits, or other items which represent an expense incurred specifically by Districts.
6. Agency shall charge Districts and Districts shall pay Agency for all costs incurred by Agency in providing service to Districts. Charges for services provided shall be determined as follows:
 - a) Charges for personnel shall be based upon Agency employee's hourly direct labor rates, plus the hourly labor burden, and include Agency's applied overhead costs determined to be directly chargeable to Districts. Overhead costs may include but not be limited to building space rental or improvement costs; building operation and maintenance costs; furniture and office equipment; small tools and miscellaneous equipment; telephone and other

utility services; postage, miscellaneous supplies and household expenses; janitorial, printing, landscape and other miscellaneous services; County accounting services, County Administrator services, Agency Board of Director services, and other County services.

- b) Charges for vehicles and heavy equipment shall be based upon an average hourly use rate established for various classes of vehicles as determined by Agency. The average hourly rate of use shall include for each individual class of vehicles the cost of operation and maintenance, depreciation, a rate of return on equity investment by Agency, and other miscellaneous costs. Average annual costs, however, shall not exceed the average hourly rate charged for the rental of vehicles or heavy equipment by commercial establishments within the County of Sonoma;
 - c) Other miscellaneous costs including but not limited to laboratory services, computer services and other services that can be structured and billed as direct service charge and not as a component of Agency overhead, shall be billed at the Agency's average cost for providing said service to Districts and other customers of Agency.
- 7. Agency shall bill Districts directly as needed through its normal course of operation by journal vouchers, purchase requisitions, blanket purchase orders, claims, or other methods available to Agency to recover costs for Agency service and service of others provided to Districts.
 - 8. Agency shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and make such documents and records available to Districts for inspection at any reasonable time. Agency shall maintain such records in accordance with the current Records Retention Schedule as approved by the Board of Directors following completion of work hereunder.
 - 9. Districts shall indemnify, hold harmless, release and defend Agency, its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, including Districts, arising out of or in connection with the performance of Agency hereunder, or with the work, operation, or activities involving Districts or their facilities.
 - 10. Apart from the allocation and method of payment for direct costs and services provided as described herein, the debts, liabilities, and obligations of each individual party to this Agreement shall remain the debts, liabilities, and obligations of that individual party.

BE IT FURTHER AGREED that the parties hereto intend this writing to be the final expression of the terms between the parties pursuant to Code of Civil Procedure Section 1856 and no modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties as an amendment to this Agreement.

BE IT FURTHER AGREED that either party hereto may at any time and without cause terminate this Agreement by giving the other party one hundred and eighty (180) days written notice of such termination, stating the reason for such termination, if any.

BE IT FURTHER AGREED that each party hereto undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

BE IT FURTHER AGREED that no party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have consented.

BE IT FURTHER AGREED that nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

BE IT FURTHER AGREED that a waiver by any party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

BE IT FURTHER AGREED that this Agreement shall be construed and interpreted according to the substantive law of California excluding the law of conflicts. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma.

BE IT FURTHER AGREED that time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, duly authorized;

REVIEWED AS TO SUBSTANCE:

By: *Randy D. Park*
Department Head

REVIEWED AS TO FORM:

By: *Greene*
County Counsel
By: *[Signature]*
County Counsel

APPROVED:

SONOMA COUNTY WATER AGENCY

By: *[Signature]*
Chairman, Board of Directors

ATTEST:

Eve T. Lewis

EEVE T. LEWIS, County Clerk and
ex-officio Clerk of the Board
of Directors

APPROVED:

OCCIDENTAL COUNTY SANITATION
DISTRICT

By: *[Signature]*
Chairman, Board of Directors

ATTEST:

Eve T. Lewis

EEVE T. LEWIS, County Clerk and
ex-officio Clerk of the Board
of Directors

APPROVED:

FORESTVILLE COUNTY SANITATION
DISTRICT

By: *[Signature]*
Chairman, Board of Directors

ATTEST:

Eve T. Lewis

EEVE T. LEWIS, County Clerk and
ex-officio Clerk of the Board
of Directors

APPROVED:

RUSSIAN RIVER COUNTY SANITATION
DISTRICT

By: *[Signature]*
Chairman, Board of Directors

ATTEST:

Eve T. Lewis
EVE T. LEWIS, County Clerk and
ex-officio Clerk of the Board
of Directors

APPROVED:

SOUTH PARK COUNTY SANITATION
DISTRICT

By: *[Signature]*
Chairman, Board of Directors

ATTEST:

Eve T. Lewis
EVE T. LEWIS, County Clerk and
ex-officio Clerk of the Board
of Directors

APPROVED:

SONOMA VALLEY COUNTY SANITATION
DISTRICT

By: *[Signature]*
Chairman, Board of Directors

ATTEST:

Eve T. Lewis
EVE T. LEWIS, County Clerk and
ex-officio Clerk of the Board
of Directors

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END

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2 Jerry Bernhaut, Esq. SBN# 206264
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4 Post Office Box 5469
5 Santa Rosa, California 95402-5469
6 Telephone: (707) 528-8275
7 Facsimile: (707) 542-7139

8 Attorneys for Plaintiff
9 Northern California River Watch

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 NORTHERN CALIFORNIA RIVER
13 WATCH, a non-profit Corporation,

CASE NO: C06-04182 SC

14 Plaintiff,

PROOF OF SERVICE

15 v.

16 SONOMA COUNTY WATER AGENCY,
17 SONOMA COUNTY BOARD OF
18 SUPERVISORS, RUSSIAN RIVER
19 COUNTY SANITATION DISTRICT,
20 ET AL

21 Defendants.

1 PROOF OF SERVICE

2
3 I am employed in the County of Sonoma, State of California. I am over the age of
4 eighteen years and not a party to the within action. My business address is 100 E Street, Suite
202, Santa Rosa, CA 95404.

5 On July 13, 2006, I served the following described document(s):

6 **Complaint for Injunctive Relief, Civil Penalties, Restitution and Remediation**

7 on the following parties by placing a true copy in a sealed envelope, addressed as follows:

8 Stephen Johnson, Administrator
9 U.S. Environmental Protection Agency
10 1200 Pennsylvania Avenue, N.W.
Mail Code 3213A
Washington, D.C. 20460

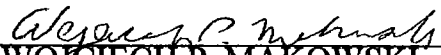
11 John Ashcroft, U.S. Attorney General
12 Department of Justice
13 950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

14 [X] (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class
15 mail, for collection and mailing at Santa Rosa, California, following ordinary business practices.
16 I am readily familiar with the practices of Law Offices of Jack Silver for processing of
correspondence; said practice being that in the ordinary course of business, correspondence is
deposited with the United States Postal Service the same day as it is placed for processing.

17 [] (BY PERSONAL SERVICE) I caused each envelope to be delivered by hand to the
18 address(es) noted above.

19 [] (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by
20 Facsimile machine (FAX) to the number indicated after the address(es) noted above.

21 I declare under penalty of perjury, under the laws of the State of California, that the
22 foregoing is true and correct, and that this declaration was executed on July 13, 2006 at Santa
23 Rosa, California.

24 
25 WOJCIECH P. MAKOWSKI
26
27